

BYLAWS

§ 544.5 Federal mutual savings association bylaws.

(a) *General.* A Federal mutual savings association shall operate under bylaws that contain provisions that comply with all requirements specified by the OTS in this section and that are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations *provided that*, a bylaw provision inconsistent with the provisions of this section may be adopted with the approval of the OTS. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the association's board of directors. The bylaws for a Federal mutual savings bank shall substitute the term "savings bank" for "association". The term "trustee" may be substituted for the term "director".

(b) The following requirements are applicable to Federal mutual savings associations:

(1) *Annual meetings of members.* An association shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the association may be conducted. Such meeting shall be held, as designated by its board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(2) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this sec-

tion, "voting capital" means FDIC-insured deposits as of the voting record date.

(3) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the association. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(4) *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(5) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the

meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(6) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Office, including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(7) *Communications between members.* Provisions relating to communications between members shall be consistent with § 544.8 of this part. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

- (i) A list of depositors in or borrowers from such association;
- (ii) Their addresses;
- (iii) Individual deposit or loan balances or records; or
- (iv) Any data from which such information could be reasonably constructed.

(8) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Director of the Office or his or her designee. Each director of the association shall be a member of the association. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate. State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions

are authorized by the Office, and provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal savings association.

(9) *Meetings of the board.* The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(10) *Officers, employees, and agents.* (i) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(ii) All officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices. Any officer may be removed by the board of directors with or without cause, but such removal,

other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

(iii) Any indemnification provision must provide that any indemnification is subject to applicable Federal law, rules, and regulations.

(11) *Vacancies, resignation or removal of directors.* Members of the association shall elect directors by ballot. Provided, that in the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director, which shall be by written notice or by any other procedure established in the bylaws. Directors may be removed only for cause as defined in §563.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(12) *Powers of the board.* The board of directors shall have the power:

(i) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(ii) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

(iii) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(13) *Nominations for directors.* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by

a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(14) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

(15) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(i) Amendments shall be effective:

(A) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the association at a legal meeting; and

(B) After receipt of any applicable regulatory approval.

(ii) When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(16) *Miscellaneous.* The bylaws may also address the subject of age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations, and any other subjects necessary or appropriate for effective operation of the association.

(c) *Form of filing—(1) Application requirement.* (i) Any bylaw amendment shall be submitted to the OTS if it would:

(A) Render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management;

(B) Involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or

(C) Be inconsistent with the requirements of this section or with applicable laws, rules, regulations, or the association's charter.

(ii) Applications submitted under paragraph (c)(1)(i) of this section shall be subject to the applications processing procedures set forth at § 516.2 of this chapter.

(iii) For purposes of this paragraph (c), bylaw provisions that adopt the language of the model bylaws set forth in OTS's Application Processing Handbook, if adopted without change, and filed within 30 days after adoption, are effective upon adoption.

(2) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (c)(1) or (c)(3) of this section, then the association shall submit the amendment to the OTS at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(3) *Corporate governance procedures.* A Federal mutual association may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (c)(1) of this section. If this election is selected, a Federal mutual association shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (c)(1) of this section.

(d) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (c)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment. This automatic effective

date does not apply if, prior to the expiration of such 30-day period, the OTS notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (c)(1) of this section.

[54 FR 49486, Nov. 30, 1989, as amended at 55 FR 13511, Apr. 11, 1990; 57 FR 14339, Apr. 20, 1992; 61 FR 64016, Dec. 3, 1996; 62 FR 66262, Dec. 18, 1997]

§ 544.6 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

AVAILABILITY

§ 544.7 In association offices.

A Federal mutual savings association shall make available to its members at all times in its offices a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member on request.

§ 544.8 Communication between members of a Federal mutual savings association.

(a) *Right of communication with other members.* A member of a Federal mutual savings association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the Federal savings association regarding any matter related to the Federal savings association's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the Federal mutual savings association.

(b) *Member communication procedures.* If a member of a Federal mutual savings association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the Federal mutual savings association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the